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January 11, 2011

Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination &  
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Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

RE: MUR 6435

Dear Mr. Jordan:

This letter is in response to the complaint filed by the National Legal and Policy Center ("Complainant")<sup>1</sup> against Representative Charles Rangel ("Mr. Rangel"), the Rangel for Congress Committee ("RFC"), the National Leadership PAC ("NLP") and Mr. Basil Paterson in his capacity as Treasurer to both of these committees. RFC is Mr. Rangel's principal campaign committee; NLP is a leadership PAC sponsored by Mr. Rangel.

Complainant alleges that NLP made excessive in-kind contributions to RFC and/or improper payments on behalf of Mr. Rangel by paying Mr. Rangel's legal fees during a period of time in which he was under investigation by the U.S. House of Representatives' Committee on Standards of Official Conduct ("Ethics Committee"). This is not the case. The legal fees paid by NLP were for legal services incurred for NLP, not RFC or Mr. Rangel.

Indeed, the complaint filed in this matter fails to provide the specific facts required by law and Commission regulations to sustain a finding of reason to believe that NLP violated the Federal Election Campaign Act ("FECA"). Instead, the complaint relies entirely on speculation to support a series of erroneous conclusions.

11 C.F.R. § 111.4(d) sets forth the requirements for filing a complaint with the FEC. It states, in pertinent part, that a complaint *must contain a recitation of the facts*

<sup>1</sup> The National Legal and Policy Center purports to exist to "foster and promote ethics in government and public life," but in fact its efforts appear to be aimed at harassing Democratic candidates, officials and political organizations.

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*which describe a violation of a statute or regulation over which the Commission has jurisdiction, and in cases involving statements that are not based on personal knowledge it should be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements.*

In MUR 4960 (Hillary Rodham Clinton for US Senate Exploratory Committee, Inc.), a Statement of Reasons adopted by four commissioners elaborated on the legal standing for finding reason to believe: "The Commission may find reason to believe only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA. Complaints based upon personal knowledge must identify a source of information that reasonably gives rise to a belief in the truth of the allegations presented ...". MUR 6002 (In re Freedom Watch, Inc.), Statement of Reasons of Chairman Petersen and Commissioners Hunter and McGahn (citing MUR 6002 and the Statement of Reasons adopted by Commissioners Mason, Thomas, Sandstrom and Smith).

None of the facts set forth by Complainant give rise to a violation of FECA. See Complaint pages 2-4. Nor does Complainant cite any sources of information in support of its allegations. Instead, without offering any factual basis, Complainant merely speculates, without offering any more, that, because NLP appears to have made substantial payments for legal fees, they must have been on behalf of Mr. Rangel. See Complaint, p.5 ("[NLP] paid Rep. Rangel's legal fees with its \$100,000 payment to Orrick, Herrington & Sutcliffe on January 5, 2009 and \$293,000 to Zuckerman, Spaeder LLP in 2010. Thus at least \$393,000 appears to have been improperly spent by [NLP] for Rep. Rangel's legal fees ...").

Complainant then makes a futile attempt to "boot-strap" one baseless assertion on top of another by claiming that, "[s]ince [NLP] paid legal fees to Oldaker, Belair & Wittie, during the period in which Rep. Rangel was being investigated, *it is quite possible, if not likely* that some portion of those legal fees were also improper." (Emphasis added).

Of course, this is all pure speculation. Complainant offers no evidence whatsoever to support any of its claims. And in fact, Complainant undermines its own case by admitting "it is impossible to determine what percentage of the fees went for work connected to the House investigation." Complaint, p.5. In making this admission, Complainant is acknowledging that it has no specific facts and no credible source of information to offer in support of its accusation that NLP's payments for legal fees were made on behalf of RFC and/or Mr. Rangel personally. Quite the contrary, Complainant concedes that it was "superficially plausible" that NLP's payments may have been to pay for its own legal services. Complaint, p.7.

Complainant next tries to argue that NLP's legal expenses could not have been significant because the Ethics Committee had no jurisdiction over NLP and could not have fined or penalized NLP. See Complaint, p.7. This argument is fallacious for a number of reasons.

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First, it incorrectly assumes that legal fees are only necessary when a political committee is the target of an investigation. This is not true. Parties and nonparties to enforcement and other legal proceedings have important legal interests to protect and assert and must retain legal counsel for such purpose, regardless of whether they are the targets of an investigation. This includes identifying, analyzing and producing documents and other information for enforcement authorities and other parties to the proceeding, as well as other preparatory legal work. NLP, in particular, incurred significant legal expenses because it shared campaign staff and office space with RFC, and Mr. Rangel's close association with NLP required it to frequently conduct due diligence in order to provide comprehensive responses to investigators questions as well as questions posed by Mr. Rangel and RFC. Thus, when Complainant claims that "[t]he portion of the case involving NLP was, by any yardstick, very minor," Complaint, p. 8, this statement either reflects naivety, ignorance of the legal process, or is a deliberate mischaracterization by Complainant of NLP's interest and involvement in the Ethics Committee investigation. To illustrate, according to media reports, Rep. Jerry Lewis (R-CA) incurred more than \$1,000,000 in legal fees in an enforcement proceeding where he was never contacted, much less accused of wrongdoing, by enforcement authorities.

Second, it is simply incorrect to say that the Ethics Committee did not have jurisdiction over NLP. The Ethics Committee has subpoena authority over private parties (including NLP), and while it may not be able to sanction a private party directly, it may refer matters for Justice Department investigation and possible prosecution. This would include failure to comply with a subpoena, filing false statements and/or obstruction of justice. Moreover, while the Ethics Committee may not have had authority to fine or otherwise penalize NLP, the investigation posed substantial reputational and economic concerns and liability for NLP. This necessitated NLP's serious attention and involvement in the investigation.

Finally, Complainant fails to acknowledge that there were other, concurrent legal proceedings ongoing at the same time as the Ethics Committee investigation with implications for NLP. NLP had a substantial interest and involvement in these matters and retained legal counsel to protect those interests. In particular, NLP was named and is involved in defending itself in an FEC complaint concerning the use, along with RFC, of a rent-stabilized unit as a campaign office. *See* MUR 6040.<sup>2</sup> The Justice Department also had initiated an investigation (pursuant to a referral by the Ethics Committee) of the activities of Carib News, an organization based in New York City that has been accused of misleading Congress in regards to certain business conferences it hosted in 2007 and 2008. While neither Mr. Rangel, RFC nor NLP are targets in that investigation, NLP staff and resources are required in providing information to investigators. In addition, legal counsel was contacted at one point in time by federal prosecutors that they might be preparing to conduct an investigation of matters relating to the Ethics Committee investigation. Thus, the legal proceedings in which NLP had an interest were not limited to the Ethics Committee investigation. In any event, the intense scrutiny to which Mr.

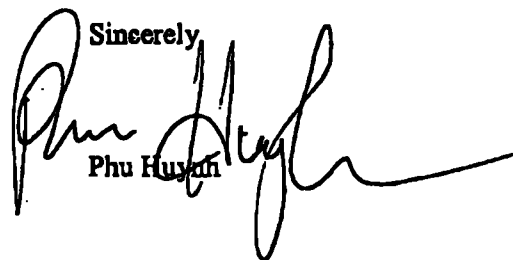
<sup>2</sup> This MUR is ongoing and has involved interviews of NLP staff.

Rangel has been subjected since 2008 has required a higher level of legal review, and this has resulted in additional legal compliance costs for NLP as well as RFC.

One of the realities of the modern political era is that high profile candidates and officeholders, including the political organizations they are associated with, at some point will be involved in one or more legal proceedings that necessitate the expenditure of substantial amounts of funds for legal fees. NLP fully disclosed its payments to the various law firms it has retained. Complainant seeks to add to NLP's legal expenses by bringing this complaint without offering any specific facts or other source of information that the payments it made were inappropriate.

In sum, the complaint offers no specific facts or other sources of information to support a finding of reason to believe that NLP has violated FECA. As stated at the outset, the legal fees paid by NLP were for legal services it incurred on its own behalf relating to the House Ethics Committee investigation, other ongoing legal proceedings and generally heightened compliance efforts. The Complainant initially asserts that all of NLP's payments for legal expenses were improper but quickly retreats from this position and acknowledges that the payments may have been appropriate. Without offering any specific facts whatsoever to support its assertions, this complaint fails to meet the Commission's standards to find reason to believe and must be dismissed.

Sincerely,

  
Phu Huynh